

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

)

**CASE NO. 8:05CR116**

)

**Plaintiff,**

)

**v.**

)

**MEMORANDUM  
AND ORDER**

)

**CLINTON BROOKS,**

)

)

**Defendant.**

)

)

This matter is before the court on initial review of the defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a person in Federal Custody" (§ 2255) (Filing No. 185), defendant's motion to appoint new counsel and dismiss current counsel (Filing No. 186), and defendant's motion to appoint counsel (Filing No. 202).

Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process.

The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

After pleading guilty to Count I of the Indictment charging defendant with conspiracy to defraud the government in violation of 18 U.S.C. § 371 and Count IX of the Indictment Fraud with Identification Documents in violation of 18 U.S.C. 1028(A), defendant was sentenced to the custody of the Bureau of Prisons for 21 months on Count I and 24 months on Count IX to be served consecutive. Defendant did not file a direct appeal.

In his § 2255 motion defendant argues that he received ineffective assistance of counsel. The United States shall respond to the defendant's claims by filing an Answer. In addition to any other issues raised in the Answer, the United States shall address whether this claim is barred by procedural default, waiver, or untimeliness.

IT IS ORDERED:

1. The Court has completed the initial review of the defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 motion") (Filing No.185);

2. Upon initial review, the Court finds that summary dismissal of the defendant's claims in the § 2255 motion is not required;

3. On or before October 27, 2006, the United States shall file an Answer to the defendant's Claims in the § 2255 motion and support its Answer with a brief;

4. On or before November 27, 2006, the defendant may file a responsive brief addressing the government's Answer;

6. The defendant's Motion to Dismiss Current Counsel and Appoint New Counsel (Filing No. 186) is granted in part and denied in part. The motion is granted in part as the court will dismiss defendant's current counsel but denied in part as the court will not appoint new counsel at this time.

7. Defendant's Motion to Appoint New Counsel (Filing No. 202) is denied.

8. The Clerk is directed to mail a copy of this Memorandum and Order to the defendant at his last known address.

DATED this 19<sup>th</sup> day of September, 2006.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge